

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MACEO SPATES, #1199722,

Petitioner,

v.

ACTION NO. 2:11cv284

HAROLD CLARKE,
Director, Virginia Department of Corrections,

Respondent.

ORDER

Petitioner, a Virginia inmate, submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 alleging violation of federal rights pertaining to Petitioner's convictions on May 8, 2007, in the Circuit Court for the City of Virginia Beach for abduction, rape, unlawful wounding, and petit larceny. As a result of the convictions, Petitioner was sentenced to serve thirty-four years in the Virginia penal system.

On January 17, 2012, Respondents were ordered to produce the transcript of Petitioner's February 12, 2007 hearing in the Circuit Court for the City of Virginia Beach (Commonwealth v. Spates, CR06-130 (Feb. 12, 2007)), and provide a copy to Petitioner. Respondent submitted the transcript to the court on February 2, 2012. ECF No. 16. However, the transcript was mailed to an incorrect address for Petitioner. Petitioner filed a Motion for Declaratory Judgment (ECF No. 17) on February 23, 2012, asking the court to reverse his conviction and enter judgment for Petitioner due to Respondent's failure to provide the transcript as ordered. On February 23, 2012, Respondent filed a Notice indicating the transcript had been mailed to Petitioner at his correct address. ECF No. 18. Petitioner's Motion for Declaratory Judgment will be addressed in the undersigned's Report and Recommendation to the District Judge.

Petitioner is ADVISED he has until March 23, 2012 to file a response addressing his claim in Ground 3 that the trial court violated his constitutional rights by determining he waived his right to counsel at the time of trial. Respondent may file a reply within fifteen days of the filing of Petitioner's response.

A copy of this Order shall be sent to Petitioner and counsel of record for Respondents.

/s/

Tommy E. Miller
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia
February 24, 2012